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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/584,375 05/31/00 GARVIE

B GAR-001

EXAMINER

QM12/0717

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ART UNIT

PAPER NUMBER

3728

DATE MAILED:

07/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/584,375

Applicant(s)

GARVIE, BRUCE HENRY

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2000 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5 and 10-11, drawn to the product of an insert with traction member, classified in class 36, subclass 134.
 - II. Claims 6-9, drawn to the method of injection molding an insert and traction device, classified in class 264, subclass 478.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by molding the insert and traction member together by any other known molding process other than injection molding.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, have acquired a separate status in the art as shown by their different classification, and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with John Welsh on July 10, 2001 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-5 and 10-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference number 30 as shown in Figure 2 is not mentioned in the specification as originally filed. Correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by the German reference to Molde Moller 2,733,846 (Moller '846). Moller '846 discloses all the limitations as claimed including the following: an insert (2 with 3, 3a) made from synthetic plastic (hard plastics core); a plastic traction member (1), soft outer casing of plastic); stem portion (3); engagement means (end of stem portion that is placed within the sole of the shoe, i.e. threaded shaft); securing formation 3a on stem for securing traction member to insert; the insert including a raised spike (shown at lead line 2 in Figure 1) opposite the first end of the stem; the spike aligned with a traction member spike (that coated outside of 2 in Figure 1 which is part of 1) and cooperates with the spike of the insert; the spike of the insert (2), will appear after the outer spike 1 is worn, indicating wear to the spike.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 4, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins 4,791,692 in view of the German reference to Molde Moller 2,733,846 (Moller '846). Collins '692 discloses substantially all the limitations of the claims including the following: an insert (that shown located within 20 and outside of 18 in Figure 3) made from synthetic plastic (see column 2, lines 26-29); a plastic traction member (2, see column 4, lines 15-22); stem portion (3); engagement means (4, end of stem portion that is placed within the sole of the shoe, i.e. threaded shaft); securing formation (threads) on stem for securing traction member to insert; the insert including a raised spike (see area of 8 in Figure 1, this end of insert is a spike) opposite the first end of the stem; the spike aligned with a traction member spike (that coated outside of insert in Figure 1, i.e. 2) and cooperates with the spike of the insert; the spike of the insert (14), will appear after the outer spike 2 is worn, indicating wear to the spike and the color of each of the insert and traction member are different (see column 4, lines 54-62). Collins '692 doesn't disclose the plastic of the insert being harder than that of the traction member. Moller '846 teaches that a cleat with a pike inside a spike configuration can have the inner spike made of a hard plastic while the outer casing can be made of relatively soft plastic. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the insert member of Collins '692, out of harder plastic than the traction member, as taught by Moller '846, to give support to the traction member yet protect other players from injury due to the impact of the traction member.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 4 in paragraph 7 above, in view of MacNeill 5,996,260. The references as modified and applied to claim 4 in paragraph 7 above disclose all the limitations of the claim except for the material

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of the insert and the traction member being of different colors. MacNeill '260 teaches that the inner material (insert) of a cleat can be made of a different colored material than the outer material of the cleat (col. 3, line 58-col. 4, line11). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the insert and traction material of the references as applied to claim 4 in paragraph 7 above different colors to indicate when the cleat should be replaced due to wear and tear on the cleat.

11. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being obvious over the references as applied to claims 1 and 10 above. The references as applied to claims 3 and 11 disclose the use of harder material for the insert and softer material for the traction member. The hardness or softness of the material used appears to have been a mere matter of testing and optimization to find what hardness for the given parts would give the desired effect. It has been well settled that the determining or controlling of the hardness of a material would only require routine skill of one of ordinary skill in the art. Therefore, it would have been obvious, to one of ordinary skill in the art, to find a harder material for the insert and a softer material for the traction member of the references as applied to claims 3 and 11 above since the exact hardness determination appears to not be critical to the invention.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such

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papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T. Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

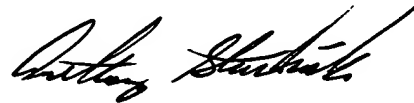
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



Anthony D Stashick
Examiner
Art Unit 3728

ADS
July 12, 2001